

STATE OF MICHIGAN
COURT OF APPEALS

KING DINING, INC.,

Plaintiff-Appellant,

v

TRIZEC NEW CENTER DEVELOPMENT, f/k/a
ALC ENTERPRISES, INC.,

Defendant-Appellee.

UNPUBLISHED

May 3, 2002

No. 230584

Wayne Circuit Court

LC No. 99-924944

Before: White, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Plaintiff King Dining, Inc. (KDI) is a Burger King franchisee. Robert Asmar is the majority shareholder and president of KDI. Asmar is also the majority shareholder and president of Asmar Development, Inc. (ADI). On August 11, 1993, defendant Trizec, as landlord, and ADI, as tenant, entered into a five-year lease for Suite 202 of the New Center One Building in Detroit. In 1995, a dispute arising from the terms of the lease arose between Trizec and ADI, which resulted in the filing of at least two lawsuits and, ultimately, an arbitration award in favor of Trizec.

KDI thereafter filed the present action against Trizec, raising claims that are identical to the affirmative defenses and requests for set-offs raised by ADI in the earlier proceedings against Trizec that were rejected by the arbitrator. Trizec moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that KDI's claims were barred by the doctrine of collateral estoppel. Following a hearing, the circuit court ruled that KDI did not have a lease with Trizec and therefore did not have standing to pursue the claims. MCR 2.116(C)(5). The court also noted that even if KDI did have standing, the claims arose out of the relationship with ADI, whose rights had already been adjudicated in two prior litigations.

This Court reviews a motion for summary disposition pursuant to MCR 2.116(C)(5) and (7) de novo to determine whether the moving party is entitled to judgment as a matter of law. *Franklin Historic District Study Committee v Village of Franklin*, 241 Mich App 184, 187; 614 NW2d 703 (2000).

The lease between Trizec and ADI clearly states:

Without Landlord's prior written consent, Tenant will not assign all or any of its interest under this Lease, sublet all or any part of the Premises or permit the Premises to be used by any parties other than the Tenant and its employees.

The lease also provides that if the tenant wishes to assign or sublease, written notice must be given to the landlord and the landlord's consent must be provided. There is no dispute that ADI never gave notice to Trizec nor sought its consent to assign the lease to Asmar, Inc., King Dining, or anyone else. Thus, ADI's lease documents purporting to sublease the premises from "Asmar, Inc." to "ALC Enterprises" were invalid. See *Wentworth v Process Installation, Inc.*, 122 Mich App 452, 462-464; 333 NW2d 78 (1983) (anti-assignment clause in lease prohibited assignment without written consent). Given the lack of any enforceable lease agreement or other contractual relationship between Trizec and plaintiff, the trial court correctly ruled that plaintiff did not have standing to sue Trizec.¹

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald

¹ In light of our conclusion, we need not address the issue of collateral estoppel. We note, however, that KDI's interests were adequately represented in the earlier litigation and that the claims raised by KDI were considered by the arbitrator in the earlier litigation and, therefore, collateral estoppel does preclude this relitigation.